

EXHIBIT “1”



THE MAIN STREET AMERICA GROUP



SENT FIRST CLASS AND CERTIFIED MAIL

November 18, 2021

Advanced Plastering Inc.
1340 Dell Rd
Norristown, PA 19403

RE: Insured: Advanced Plastering Inc.
Claim #: 01-004-000225 PA
Policy #: MPZ9088B
Claimants: Haverford Reserve COA
Policy periods: 8/6/10 – 9/4/15
Project: Haverford Reserve
GC: Guidi Homes
Matter: Haverford Community Association vs
Haverford Reserve LLC and Guidi Homes, et al.
Case: Delaware Co PA docket # 16-11177

Dear M. Fisher:

Main Street America Assurance Company (MSAAC) has been placed on notice of construction defect claim(s) involving the project Haverford Reserve in King of Prussia, PA, in which the claimant(s) are alleging multiple construction defects. Advanced reportedly worked at project from 2009 – 2014. Your other insurance carrier, Selective, reported this claim to us recently. A Joinder complaint filed in Haverford Community Association matter - Delaware Co PA docket # 16-11177, by Haverford Reserve LLC and Guidi Homes -- counts against multiple subs including insured Advanced Plastering:

- I - Breach of Contract
- II - Breach of Contract Quality Requirements
- III - Contribution and Indemnity Common Law
- IV - Contractual Indemnity
- V - Breach of Contract Failure to Procure Insurance
- VI - Breach of Express Warranty
- VII - Breach of Contract Third party Beneficiary
- VIII - Negligence
- IX - Negligent Misrepresentation under BILT-RITE/ Restatement of Torts

This is notice that MSAAC is currently investigating this matter subject to a full reservation of rights and has agreed to join and share in your defense with Selective under this Reservation of Rights.

Defense counsel assigned is James Murray of the law firm, Litchfield Cavo, and if he has not already done so, he should be in touch with you soon to further discuss this matter.

We ask that you please provide copies of your job file(s) for these project(s) and advise if any subcontractors were used by your company for the work.

Be advised that if the alleged defects are to the work required by your contract, without an allegation of resultant damages, coverage may not apply for the claim as these defects would not meet the definition of "property damage" arising from an "occurrence", under the policy.

Also, if there are allegations related to mold damages arising out of water intrusion, your policy specifically excludes mold related damages.

This letter is to affirm what is covered and what is excluded under your Businessowners Liability Policy with MSAAC. Please turn your attention to the following policy provisions of your Business Owner's Liability policy form **BPM P 2 (12-07)**.

A. Coverages

1. Business Liability

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage," "personal and advertising injury" to which this insurance does not apply. We may at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But
- b.** This insurance applies:

 - (1)** To "bodily injury" and "property damage" only if:

- (a) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (b) The “bodily injury” or “property damage” occurs during the policy period; and
- (c) Prior to the policy period, no insured listed under Paragraph C. 1. Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred in whole or in part. If such a listed insured or authorized “employee” knew, prior to policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known before the policy period.

The following Exclusions apply:

B. Exclusions

1. Applicable to Business Liability Coverage

This insurance does not apply to:

...

b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement;

...

k. Damage to Property

“Property damage” to:

...

(5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the “property damage” arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

...

Paragraph (6) of this exclusion does not apply to “property damage” included in the “products-completed operations hazard”.

...

m. Damage to Your Work

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage to Impaired Property or Property Not Physically Injured

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical

injury to “your product” or “your work” after it has been put to its intended use.

o. Recall of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) “Your product”;

(2) “Your work”; or

(3) “Impaired property”;
if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Your policy defines an “insured” as follows:

C. Who Is An Insured

1. If you are designated in the Declarations as:

...

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

...

The following definitions apply:

F. Liability and Medical Expenses Definitions

...

5. “Employee” includes a “leased work”. “Employee” does not include a “temporary worker”.

- 6.** “Executive officer” means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

...

- 8.** “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

- a.** It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
- b.** You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- (1)** The repair, replacement, adjustment or removal of “your product” or “your work” or
- (2)** Your fulfilling the terms of the contract or agreement.

...

- 10.** “Leased worker” means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. “Leased worker” does not include a “temporary worker”.

...

- 13.** “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

...

- 16.** “Products-completed operations hazard”:

- a.** Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “you work” except:
 - (1)** Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at the job site has been put to its intended use by any other person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The “bodily injury” or “property damage” must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of “your product” for consumption on premises you own or rent.

b. Does not include “bodily injury” or “property damage” arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you and that condition was created by the “loading or unloading” of that vehicle by an insured; or

(2) The existence of tools, uninstalled equipment or abandonment or unused materials.

17. “Property damage” means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be

deemed to occur at the time of the physical injury that caused it; or

- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

...

- 19.** “Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions.

...

- 21.** “Your product”:

- a.** Means:

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a)** You;

- (b)** Others trading under your name; or

- (c)** A person or organization whose business or assets you have acquired; and

- b.** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

- 22.** “Your work”:

- a.** Means:

- (1)** Work or operations performed by you or on your behalf; and

- (2)** Materials, parts or equipment furnished in connection with such work or operations.

- b.** Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

This policy is subject to the Fungi or Bacteria Exclusion endorsement **BP 05 77 (01/06)** which reads as follows:

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following exclusion is added to **Section II – Liability:** Exclusions of the Businessowners Liability Coverage Form

A. The following exclusion is added to Paragraph **B.1., Exclusions - Applicable To Business Liability Coverage:**

t. Fungi Or Bacteria

- (1) "Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following definition is added to **Section F – Liability and Medical Expenses Definitions:**

1. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

In summary, your policy specifically excludes coverage for damages to "your work" or claims to repair or replace "your work", including warranties related to "your work". The policy does not act as a warranty for performance or quality of work or as protection against any breach of contract. Defective work in and of itself does not constitute "property damage" arising out of an "occurrence".

Also, your policy specifically excludes coverage for damages arising from mold. Therefore we will not provide coverage for any repairs to resultant damages that are caused by mold or are mold related, which includes the remediation or cleanup of mold.

MSAAC is continuing with the investigation of this loss under a complete reservation of rights of all parties, for the reasons cited above and for any other reason which may become evident during the investigation of this matter. MSAAC reserves the right to withdraw from the handling of this matter if it is determined there are no covered damages.

Because coverage for indemnity remains in question and the amount of damages are unknown at this time, there is a possibility for the claimed damages to not be covered and/or to exceed your policy limit and therefore, you have the right to consult with your own personal counsel at your own cost to protect your potential uninsured and/or excess exposure.

Further, Pennsylvania recognizes "manifestation" as the trigger for coverage in a construction defect matter meaning that coverage only falls within the insurance policy in effect at the time the loss/ when the damages are first discovered. So, as we proceed to gather information through the discovery process, if it is determined that manifestation falls outside our policy period of 8/6/10 – 9/4/15, we would not have a further duty to defend and/or indemnify.

Please be advised MSAAC reserves all rights available to it under the policy and/or applicable law. Nothing in this letter is intended or should be construed as a waiver or estoppel of any term or condition of the insurance policy or as a waiver or estoppel of any right or defense we may have under the insurance contract or applicable law.

Again, please forward a copy of your job file(s) via email at bradleys@msagroup.com and contact me with any questions.

Sincerely,

Steve Bradley

Steve Bradley, AIC
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cc: The Dimatteo Agency Inc # 370582